NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 553 of 2014

- The New India Assurance Company Ltd. Through Divisional Manager, Opposite Rajeev Plaza, Shri Ram Trade Centre, Bilaspur C.G.

---- Appellant

Versus

1. Shiv Kumar Sahoo S/o Birjhoo Ram Sahu Aged About 39 Years
2. Smt. Premin Bai W/o Shiv Kumar Aged About 36 Years

   Both R/o Garhasivani, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.

3. Ramcharan S/o Peeloo Ram Aged About 21 Years R/o Gadhasivani, P.S. Tumgaon, Distt. Mahasamund C.G.
4. Rajesh Kumar S/o Chunulal Sahoo Aged About 45 Years R/o Gadhasivani, P.S. Tumgaon, Distt. Mahasamund C.G.

---- Respondents

For Appellant	:	Shri S.K. Agrawal, Sr. Advocate with Shri A.K. Gupta, Advocate.
For Respondent Nos.1 & 2	:	Shri J.A. Lohani, Advocate.
For Respondent Nos. 3 & 4	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13/02/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 13.3.2014 passed by Motor Accident Claims Tribunal, Mahasamund (CG) in Claim Case No.89/2013 awarding total compensation of Rs.3,41,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally along with non-applicants No. 1 & 2/driver & owner of the offending vehicle.

02. As per claim petition, on 2.5.2013 while Jitendra along with 80-85 persons was travelling in Metador bearing No. CG 04 G/6924, due to rash and negligent driving of the said vehicle by non-applicant No.1, the vehicle turned turtle resulting in grievous injuries to Jitendra and other passengers. During the course of treatment, Jitendra succumbed to the injuries sustained by him in the said accident. At the time of accident, deceased Jitendra was 19 years of age and earning Rs.12,000/- per month by running a grocery shop and orchestra party.

03. On claim petition being filed by the claimants, parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurer submits that in this case no premium was taken by the insurance company for covering the risk of passengers carried in the offending vehicle. As per Ex.D/2, the policy was commercial vehicle liability only policy. On the date of accident, the driver was carrying 70-80 person in the offending vehicle. This fact has been admitted by AW-1 Shivkumar in para-2 of his cross-examination. AW-2 Mordhwaj also admits that 50-60 persons were being carried in the said vehicle. NAW-1 Rajesh Kumar Sahu, owner of the offending vehicle, has stated in para-3 of his statement that his driver non-applicant No.1 Ramcharan Dhruv had not informed him about taking the said vehicle on 2.5.2013 for the purpose of marriage function of one Makhan Yadav and he came to know about the same subsequently. He states that had he been aware of the same beforehand, he would not have permitted his driver to take the vehicle for the purpose of marriage. In para-2 this witness has specifically admitted the fact that in the month of May, 2013 his vehicle and the driver were engaged in Chawla Tent House, Mahasamund on hire and reward basis. Non-applicant No.1 Ramcharan-driver, non-applicant No.2 Rajesh Kumar-owner as well as the claimant Shivkumar (AW-1), they all belong to Gadsivani; the vehicle in question was taken from Gadsivani in which 70-80 persons were travelling as per statement of AW-1 Shivkumar and therefore, it cannot be said that without knowledge of the owner, the said vehicle was being driven with number

of persons sitting in it. He submits that the insurance company examined NAW-1 Satyendra Kumar Ahuja regarding nature of the policy and breach of policy conditions. He has also stated that on the date of accident, about 80 persons were being carried in the offending vehicle against the policy conditions. In these circumstances, the insurance company is not liable to pay any compensation to the claimants and the Tribunal should have fastened liability on non-applicants No. 1 & 2 for satisfying the award.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation in favour of the claimants. He submits that if this Court finds any breach of policy conditions in this case, then the order of pay and recover may be passed to serve the interest of the claimants because the compensation amount has already been deposited by the insurance company and paid to the claimants vide order dated 10.5.2017 of this Court.

06. Respondents No. 3 & 4 have been duly served notice and are represented by this counsel. However, despite repeated calls, none appears on behalf of them.

07. Heard learned counsel for the parties and perused the material available on record.

08. In this case, it has not been disputed by the parties that the accident occurred on 2.5.2013 involving the offending vehicle driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, in which Jitendra sustained grievous injuries and died during treatment. No other issue except breach of policy conditions has been raised by the insurance company in this appeal.

09. As per Ex.D/2, proved by NAW-1 Satyendra Kumar, the policy is Commercial Vehicle Liability Only Policy. From perusal of the policy, it is evident that no extra premium was taken by the insurance company for covering the risk of passengers travelling in the offending vehicle and the sitting capacity in the vehicle is only one for driver. Section 147

of the Motor Vehicles Act, was amended w.e.f. 14.11.1994, and after amendment, risk of the owner of the goods or his authorised representative carried in the vehicle is also covered. Relevant part of amended Section 147 reads as under:

"**147. Requirements of policies and limits of liability.**

1. In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

    a. is issued by a person who is an authorised insurer; and

    b. insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

i. Against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including ***owner of the goods or his authorised representative carried in the vehicle***] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

ii. Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:"

10. In the present case, it is not in dispute that the offending vehicle is a goods vehicle and as per Ex.D/2, its gross weight is 5300 kg and the owner had taken Commercial Vehicle Liability Only Policy.

11. As per statement of AW-1 Shivkumar, in his cross-examination, he admits that 70-80 persons were being carried in the offending vehicle on the date of accident. Likewise, AW-2 Mordhwaj also admits that 50-60 persons were being carried in the said vehicle. According to NAW-1 Rajesh Kumar Sahu, owner of the offending vehicle, vide para-2 of his statement, he was well aware that in the month of May, 2013 his vehicle and the driver were engaged in Chawla Tent House, Mahasamund on hire and reward basis. From perusal of the insurance policy, it is evident that no premium was taken by the insurance company for covering the risk of passengers carried in the offending vehicle. Admittedly, the none of the persons being carried in the said vehicle was either owner of the goods or representative of the goods, if any, loaded in the said vehicle. Further, considering the statements of

Non-applicant No.1 Ramcharan-driver, Non-applicant No.2 Rajesh Kumar-owner as well as the claimant Shivkumar (AW-1), it cannot be said that without knowledge of the owner, the said vehicle was being driven with number of persons sitting in it as they all belong to the same place i.e. Gadsivani and the vehicle was also hired from Gadsivani for marriage purpose. In these circumstances, on account of there being clear breach of policy conditions on the part of owner of the vehicle, the insurance company cannot be saddled with the liability of paying compensation to the claimants.

12. Considering the facts and circumstances of the case, the fact that the offending vehicle was duly insured with the appellant/insurance company at the relevant time and that the compensation amount has already been deposited by the insurance company and paid to the claimants vide order dated 10.5.2017 of this Court, keeping in view the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762*** this Court feels it proper to order for pay and recover in this case. Accordingly, non-applicant No.3/insurance company is directed to pay the total amount of compensation to the claimants and then recover the same from non-applicant No.2/owner of the offending vehicle in accordance with law.

13. In the result, the appeal is allowed with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan